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DEPARTMENT OF COMMERCE

International Trade Administration

A-570-967; C-570-968

Aluminum Extrusions from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On July 22, 2015, the United States Court of International Trade (CIT or Court) sustained the Department of Commerce's (Department's) final results of redetermination,¹ in which the Department determined that certain Quick-Connect frames and Quick-Connect handles imported by Rubbermaid Commercial Products LLC (Rubbermaid) meet the description of excluded finished merchandise, and that certain mopping kits imported by Rubbermaid meet the description of excluded finished goods kits, and are therefore not covered by the scope of the *Orders*,² pursuant to the CIT's remand order in *Rubbermaid Commercial Products LLC v. United States*, Court No. 11-00463, Slip Op. 14-113 (CIT September 23, 2014) (*Rubbermaid I*).

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken*,³ as clarified by *Diamond Sawblades*,⁴ the Department is notifying the public

¹ See *Rubbermaid Commercial Products LLC v. United States*, Court No. 11-00463, Slip Op. 15-79 (CIT July 22, 2015) (*Rubbermaid II*), which sustained the Final Results of Redetermination Pursuant to Court Remand, *Rubbermaid Commercial Products LLC v. United States*, Court No. 11-00463 (CIT September 23, 2014) (Remand Results).

² See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (*Orders*).

³ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

that the final judgment in this case is not in harmony with the Department's Final Scope Ruling on Cleaning System Components and is therefore amending its final scope ruling.⁵

DATES: Effective date: August 1, 2015

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds, AD/CVD Operations, Office III, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202-482-6071.

SUPPLEMENTARY INFORMATION: On July 7, 2011, Rubbermaid submitted its scope request involving 13 product models, which fall into three categories of floor cleaning products: Quick-Connect frames, Quick-Connect handles, and mopping kits.⁶ The Department issued the Final Scope Ruling on Cleaning System Components on October 25, 2011, in which it determined that the Quick-Connect frames and Quick-Connect handles at issue do not meet the exclusion criteria for finished merchandise and, thus, are covered by the scope of the *Orders* because they are designed to function collaboratively in order to form a completed cleaning device, but the components to make a final cleaning device are not part of a packaged combination at the time of importation.⁷ The Department further determined that the mopping kits at issue do not meet the exclusion criteria for finished goods kits and, thus, are covered by the scope of the *Orders* because they lack the disposable mop ends at the time of importation.⁸

In *Rubbermaid I* the Court held that the Department failed to adequately explain its reasoning in the final scope ruling that the Quick-Connect frames and Quick-Connect handles at issue did not meet the finished merchandise exclusion because they were “designed to function

⁴ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Certain Cleaning System Components,” (October 25, 2011) (Final Scope Ruling on Cleaning System Components).

⁶ See Rubbermaid's July 7, 2011, Scope Request (Scope Request).

⁷ See Final Scope Ruling on Cleaning System Components at 9.

⁸ *Id.*

collaboratively” with other components to form a completed cleaning device.⁹ Thus, on remand, the Court ordered the Department to reconsider its analysis of the finished merchandise exclusion and its application to products designed to work in conjunction with other goods,¹⁰ and to further consider Rubbermaid’s argument distinguishing “finished goods” (to be excluded) from “intermediate goods” (to be included).¹¹ In addition, the Court ordered the Department to reconsider its alleged distinction between merchandise that is designed to be adaptable, interchangeable and flexible, and merchandise that is permanently assembled, in light of any appropriate scope rulings.¹² The Court also held that if the Department continues to find that the Quick-Connect handles and Quick-Connect frames do not constitute “finished merchandise”, then the Department must affirmatively define that term, taking into account Rubbermaid’s proposed definition.¹³ Lastly, concerning the mopping kits at issue, the Court ordered the Department to reconsider its interpretation of the finished goods kit exclusion, taking into account applicable scope rulings that discuss the adaptable, interchangeable nature of products for purposes of this exclusion.¹⁴

In the Remand Results, the Department clarified its interpretation of the exclusion criteria for “finished merchandise” and “finished goods kits.”¹⁵ The Department first found that, pursuant to its interpretation of the finished merchandise exclusion, the quick-connect frames and quick-connect handles were excluded from the *Orders* because 1) they are comprised of extruded aluminum and non-extruded aluminum components (thus satisfying the “aluminum

⁹ See *Rubbermaid I*, Slip Op. 14-113 at 17-20.

¹⁰ *Id.* at 20.

¹¹ *Id.* at 20-23.

¹² *Id.* at 23-27.

¹³ *Id.* at 28-29.

¹⁴ *Id.* at 30-33, referencing Banner Stands Scope Ruling and the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on EZ Fabric Wall Systems,” (November 9, 2011) (EZ Fabric Wall Systems Scope Ruling).

¹⁵ See Remand Results 11-12, 14-17.

extrusions as parts...” definition of the exclusion), and 2) they are “fully and permanently assembled and completed at the time of entry,” regardless of whether they are later incorporated with other components, or assembled into a larger downstream product (*i.e.*, a subassembly).¹⁶

With respect to the mopping kits, the Department found that these products met the exclusion for finished goods kits because 1) they were comprised of aluminum extrusions plus an additional non-extruded aluminum component which went beyond mere fasteners, and 2) in light of the certain other scope rulings,¹⁷ the interchangeable disposable mop end was not necessary to meet the exclusion for a finished goods kit.¹⁸ On July 22, 2015, the CIT sustained the Department’s Remand Results.¹⁹

Timken Notice

In its decision in *Timken*²⁰ as clarified by *Diamond Sawblades*, the CAFC has held that, pursuant to sections 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s July 22, 2015, judgment in *Rubbermaid II* sustaining the Department’s decision in the Remand Results to find that the Quick-Connect frames, Quick-Connect handles, and mopping kits at issue to be excluded from the scope of the *Orders*, constitutes a final decision of that court that is not in harmony with the Department’s Final Scope Ruling on Cleaning System Components. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the Quick-Connect

¹⁶ *Id.* at 11-12, 14-17.

¹⁷ See *Banner Stands* Scope Ruling; see also *EZ Wall Systems* Scope Ruling.

¹⁸ *Id.*

¹⁹ See *Rubbermaid II*, Slip Op. 15-79 at 15.

²⁰ See *Timken*, 893 F.2d at 341.

frames, Quick-Connect handles, and mopping kits at issue pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Determination

Because there is now a final court decision with respect to the Final Scope Ruling on Cleaning System Components, the Department amends its final scope ruling. The Department finds that the scope of the *Orders* does not cover the 13 product models of Quick-Connect frames, Quick-Connect handles, and mopping kits addressed in the underlying Scope Request filed by Rubbermaid. The Department will instruct U.S. Customs and Border Protection (CBP) that the cash deposit rate will be zero percent for Rubbermaid's Quick-Connect frames, Quick-Connect handles, and mopping kits. In the event that the CIT's ruling is not appealed, or if appealed, upheld by the CAFC, the Department will instruct CBP to liquidate entries of Rubbermaid's Quick-Connect frames, Quick-Connect handles, and mopping kits without regard to antidumping and/or countervailing duties, and to lift suspension of liquidation of such entries.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

August 19, 2015

Date

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